

(1880) 05 CAL CK 0013

Calcutta High Court

Case No: None

Nursing Doyal

APPELLANT

Vs

Hurryhur Saha

RESPONDENT

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Date of Decision: May 12, 1880

Acts Referred:

- Limitation Act, 1871 - Section 12, 29
- Limitation Act, 1877 - Section 2

Citation: (1880) ILR (Cal) 897

Hon'ble Judges: Pontifex, J; Mcdonell, J

Bench: Division Bench

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### Judgement

Pontifex, J.

We are of opinion that neither the Limitation Act of 1871, nor that of 1877, extinguishes a debt. These Acts only bar or discharge the remedy. This we think is clear from the language of the Acts, and particularly from Sections 12 and 29 of the Act of 1871, and Sections 11 and 28 of the Act of 1877.

2. The difference between these Acts and the English Limitation Law is, that in India limitation need not be set up as a defence (Section 4 of the Act of 1871 and Section 4 of the Act of 1877), while in England, the defendant must expressly claim the operation of the Statute. Section 60 of the Contract Act, which was passed after the Limitation Act of 1871, also shows that the debt is not extinguished, but may be, insisted on for certain purposes; so likewise, if the creditor had a lien on the goods of his debtor on a general account, he would be entitled to hold the goods for a debt the recovery of which was barred by the Limitation Act. And probably it would be held that an executor would be allowed to retain out of a legacy a debt owing by the legatee to the testator, though its recovery was barred by the Act. But a difficult question arises by reason of the passing and repeal of so many Limitation Acts in India, viz., whether, in consequence of the repeal of a former Act, a remedy barred

or discharged by it revives, subject of course to the provision in the repealing Act.

3. With respect to the institution of suits, Section 2 of the Limitation Act of 1877 is clear. It states that "nothing in the Act contained shall be deemed to revive any right to sue barred under any enactment thereby repealed." The Act of 1871 was not by any means so clear. In the case of *Nocoor Chunder Bose v. Kally Coomar Ghose* (I.L.R. 1 Cal. 328), I decided that the remedy barred by the Act of 1859 was not revived by the repealing Act of 1871. The reasons for my decision were that while Section 1 of the Act of 1871 declared that the Act was to come into force on the 1st of July 1871, yet at the same time it also expressly enacted that Section 2, which repealed the Act of 1859, was not to come into force before the 1st of April 1873. Between the 1st of July 1871 and the 1st of April 1873, therefore, the Act of 1859, continued in force; and during that period, by that express provision of the Act of 1871, no suit could lie for the debt which was sued for in that case. It seemed to me preposterous to impute to the legislature an intention of giving validity to a suit instituted after the 1st of April 1873, which they had at the same time, and by the same section, expressly provided, should, by the continuance of the Act of 1859, be barred between the 1st of July 1871 and 1st of April 1873.

4. But, as I have said, that difficulty is removed by the clear language of Section 2 of the Act of 1877, so far as respects the institution of suits. Unfortunately, that language is not so clear as to the conduct of proceedings in a suit after its institution.

5. In the case before us the judgment-creditor sought to enforce execution of a decree passed on the 27th May 1874. The question is, whether, assuming execution of such decree was barred by Article 167, Scheduleii of the Act of 1871, the judgment-creditor can take advantage of the more liberal provisions (as in this case) of Article 179 of Scheduleii of the Act of 1877. The Court below has decided that he cannot, and against that decision the judgment-creditor has appealed to us. His argument is, that the Act of 1877 having in its third section defined the word "suit" so as not to include an appeal or an application, therefore the words "to revive any right to sue" appearing in the second section, must also be confined to the institution of suits as opposed to the conduct of proceedings in a suit after its institution. No doubt, there is some foundation for this argument from the imperfect language used in the Act; but we think that Section 2 at least indicates the policy of the Act, and in our opinion the word "revive any right to sue" used in that section should have their widest signification, which we think would include any application invoking the aid of the Court for the purpose of satisfying a demand. It is by no means an uncommon form of speech to say sue out in execution; "we, therefore, think the words of the Act warrant the decision of the lower Court.

6. We have been referred to a case (*Shumbhoonath Shaha v. Guruchurn Lahiri*, ante, p. 894) decided by Morris and Prinsep, JJ., on the 29th of April of this year in which they arrive at the same conclusion on the broad ground that a contrary decision,

unless required by the express language of the Act, would be "opposed to the principles of a law of limitation." We are of course bound by that case.

7. But the applicant urges that the Court at Gya, to which his judgment had been transferred from Hazaribagh, was not the Court which should have tried this question of limitation; and that his case ought to have been sent back to Hazaribagh for adjudication on that question, and he has referred us to the case of Lutfullah v. Kirat Chana (13 B.L.R. App. 30: S.C., 21 W.R. 330). That case, however, is opposed to the Full Bench case of Leake v. Daniel (B.L.R. Sup. 970; S.C. 10 W.R. F.B. 10), and we think that Sections 242 and 224(c) of the new Procedure Code support the ruling of the Full Bench.

8. We, therefore, dismiss this appeal, but the position of the appellant being that of an unsatisfied creditor, we dismiss it without costs.